

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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10 ROSALIE TRAN,

11 Plaintiff,

12 v.

13 ANGELIQUE GREENBERG, *et al.*,

14 Defendants.

Case No. 2:12-cv-00449-MMD-CWH

ORDER

[Plaintiff's Motion to Remand – Dkt no. 9]

17 Before this Court is Plaintiff Rosalie Tran's Motion to Remand. (See Dkt. no. 9.)

18 For the reasons set forth below, Plaintiff's Motion is granted.

19 **I. BACKGROUND**

20 This case arises out of an automobile-pedestrian collision that occurred on
21 October 29, 2009, in Las Vegas, Nevada. Plaintiff Rosalie Tran was struck by a vehicle
22 owned by Defendant Lynn Greenberg and operated by Defendant Angelique Greenburg.
23 Plaintiff brought a suit against Defendants in the Eighth Judicial District Court of the
24 State of Nevada. (Dkt. no. 1-1.) Defendants timely removed the case to this Court on
25 the basis of diversity. (Dkt. no. 1.)

26 Plaintiff has now filed this Motion (dkt. no. 9) seeking remand on the ground that
27 this Court lacks jurisdiction to hear this suit because it is not a proper diversity suit.

1 **II. STANDARD OF REVIEW**

2 A defendant may remove an action to federal court if the plaintiff could have
3 initially filed the complaint in federal court. 28 U.S.C. § 1441(a). If a defendant has
4 improperly removed a case over which the federal court lacks diversity jurisdiction, the
5 federal court shall remand the case to state court. 28 U.S.C. § 1447(c). However, the
6 district court should deny a motion to remand to state court if the case was properly
7 removed to federal court. *Carpenters S. Cal. Admin. Corp. v. Majestic Hous.*, 743 F.2d
8 1341, 1343 (9th Cir. 1984). The removing party bears the burden of establishing federal
9 jurisdiction. *Calif. ex rel Lockyer v. Dynegy, Inc.*, 375 F.3d 831, 839 (9th Cir. 2004).
10 Removal statutes are to be strictly construed, and any doubts as to the right of removal
11 must be resolved in favor of remanding to state court. *Durham v. Lockheed Martin Corp.*,
12 445 F.3d 1247, 1252 (9th Cir. 2006).

13 **III. DISCUSSION**

14 Plaintiff's first argument in support of remand is that the Defendants' have failed to
15 meet their burden of proof on diversity of citizenship. In the Complaint, Plaintiff alleges
16 that Angelique Greenberg was and is a resident of Clark County, Nevada. Plaintiff
17 argues that Defendants are not diverse parties based on a statement made by
18 Angelique Greenberg to the process server, memorialized in the server's affidavit, that
19 Lynn Greenberg has been living in a long term care center in Las Vegas, Nevada.¹ (See
20 dkt. no. 9-C.) Based on this affidavit, Plaintiff argues that complete diversity does not
21 exist by virtue of this affidavit. Defendants in Opposition contend that neither Katelynn
22 Angelique Greenberg nor Lynn Greenberg are residents of Nevada, and that Katelynn
23 Greenberg never spoke with any process server regarding her residency. Defendants
24 allege that both are residents of Arizona, and counsel for Defendants filed an affidavit

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¹ There appears to be some confusion as to the identity of the proper parties. The
28 complaint names Angelique Greenberg as a defendant, but Defendants' counsel
appears to represent Katelynn Angelique Greenberg.

1 with this Court citing a conversation with the Defendants. (See dkt. no. 11 at ¶¶ 4-6,
2 Affidavit of Counsel in Support of Defendant's Opposition.)

3 Defendants only allege that they are residents of the state of Arizona, not *citizens*
4 of Arizona. (See dkt. no. 1 at ¶ 8; dkt. no. 11 at ¶¶ 4-6.) Though the parties did not
5 contest this issue, the Court holds that the removal notice was defective in that it does
6 not properly allege diversity. See *Steigleder v. McQuesten*, 198 U.S. 141, 143 (1905)
7 (“[A] mere averment of residence in a particular state is not an averment of citizenship in
8 that state for the purposes of jurisdiction”); *Williams v. McDaniel*, 119 F. Supp. 247, 249
9 (D. Nev. 1953) (requiring amendment of complaint to allege citizenship, not residence);
10 see also *Guaranty Nat'l Title Co., Inc. v. J.E.G. Assocs.*, 101 F.3d 57, 58 (7th Cir. 1996)
11 (it is well settled that “[w]hen the parties allege residence but not citizenship, the court
12 must dismiss the suit”); *Seven Resorts, Inc. v. Cantlen*, 57 F.3d 771, 774 (9th Cir. 1995)
13 (“It is black letter law that, for purposes of diversity, ‘[r]esidence and citizenship are not
14 the same thing’”). Both parties contest diversity based on the residency status of the
15 Defendants, and make no mention of their *citizenship*.

16 Since the burden of demonstrating jurisdiction is on the removing party, see *Calif.
ex rel Lockyer v. Dynegy, Inc.*, 375 F.3d 831, 839 (9th Cir. 2004), Defendants' notice of
17 removal was defective, and Plaintiff's Motion to Remand is granted. See *Harris v.
Bankers Life & Cas. Co.*, 425 F.3d 689, 694 (9th Cir. 2005) (“[N]otice of removability
18 under § 1446(b) is determined through examination of the four corners of the applicable
19 pleadings, not through subjective knowledge or a duty to make further inquiry.”).

20 **IV. CONCLUSION**

21 Accordingly, Plaintiff's Motion to Remand is hereby GRANTED.

22 ENTERED THIS 27th day of June 2012.

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UNITED STATES DISTRICT JUDGE